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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 AIRBIQUITY INC.,

10 Plaintiff,

11 v.

12 AT&T MOBILITY LLC, et al.,

13 Defendants.

C08-94Z

MINUTE ORDER

14
15 The following Minute Order is made by direction of the Court, the Honorable Thomas
16 S. Zilly, United States District Judge:

17 (1) Pursuant to the stipulation of the parties, docket no. 96, and subsequent
18 telephonic agreement of counsel, the following deadlines are continued as indicated:

19 Briefing on Cross-Motions for Summary Judgment

Defendants' supplemental response brief

May 8, 2009

Plaintiff's supplemental reply brief

May 22, 2009

20 Markman Hearing Materials

21 Joint Claim Chart and Prehearing Statement

March 20, 2009

Opening Claim Construction Briefs

April 24, 2009

22 Responsive Claim Construction Briefs

May 8, 2009

23 All claim construction briefing shall be noted by the filing parties for May 8, 2009.

24 (2) Pursuant to the agreement of counsel, the deposition of Dan Preston will take
25 place on April 7, 2009. Defendants' motion to compel Mr. Preston's deposition, docket
26 no. 97, is STRICKEN as moot.

1 (3) Plaintiff's motion for partial summary judgment, docket no. 59, and
2 defendants' cross-motion for summary judgment, docket no. 65, are RENOTED to May 22,
2009.

3 (4) Having reviewed the patents-in-suit, which are not part of the record, but are
4 publicly available, the Court directs the parties to SHOW CAUSE why a neutral expert
5 should not be appointed prior to the Markman hearing pursuant to Fed. R. Evid. 706. Any
6 order appointing an expert pursuant to Fed. R. Evid. 706 would be in substantially the form
7 attached hereto as Exhibit A. Responses to this show cause order shall be filed by April 24,
8 2009, along with five (5) nominations from each side for such expert.

9 (5) The Markman hearing scheduled for May 21, 2009, is STRICKEN. The Court
10 will set a Markman hearing date after reviewing the parties' responses concerning a court-
11 appointed neutral expert.

12 (6) The Clerk is directed to send a copy of this Minute Order to all counsel of
13 record.

14 Filed and entered this 11th day of March, 2009.

15 BRUCE RIFKIN, Clerk

16 s/ Claudia Hawney
17 By _____

18 Claudia Hawney
19 Deputy Clerk
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1 **EXHIBIT A**

2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 AIRBIQUITY INC.,

7 Plaintiff,

No. C08-94Z

8 v.

9 AT&T MOBILITY LLC, et al.,

10 Defendants.

ORDER OF APPOINTMENT
OF FED. R. EVID. 706 EXPERT

11
12 Good cause appearing, it is hereby

13 ORDERED, that _____ [name of expert], a _____ [type of professional] with
14 experience in _____ [area of expertise], is hereby appointed an expert in this action
15 pursuant to Federal Rule of Evidence 706; and it is FURTHER ORDERED THAT

16 1. The Rule 706 Expert in executing this appointment shall have and may
17 exercise only those powers conferred upon experts pursuant to Federal Rule of Evidence 706,
18 and as limited by this Order.

19 2. The role of the Rule 706 Expert shall be to (a) review the briefs, [expert
20 reports, expert depositions,] and related materials that the parties submit to the Court for
21 purposes of the Markman hearing on claim construction; (b) prepare a report on claim
22 interpretation that summarizes the general technology and related background of the patents-
23 in-suit, provides proposed claim construction, and summarizes the evidence relevant to said
24 proposed claim construction; (c) provide deposition testimony concerning the Rule 706
25 Expert's claim construction report; (d) attend the Markman hearing and provide testimony at
26

ORDER

1 the hearing to the extent the Court deems appropriate; and (e) prepare any further reports or
2 assistance as the Court may direct.

3 3. The Court shall not communicate with the Rule 706 Expert on any subject
4 touching the merits of this case other than in open court or with the knowledge and consent
5 of the parties. No party or counsel shall engage in *ex parte* communications with the Rule
6 706 Expert concerning any matter related to this case, except for communications regarding
7 purely ministerial matters.

8 4. By ____ [date] ____, the parties shall provide the Rule 706 Expert with a copy of
9 their Markman briefs [and expert reports,] and exhibits thereto, and proposed claim
10 construction, and provide notice to all other parties of the exact contents of this submission.
11 By ____ [date] ____, the parties shall provide the Rule 706 Expert with responsive briefs.

12 5. By ____ [date] ____, the Rule 706 Expert shall submit a written report on claim
13 interpretation as described above.

14 6. On or before ____ [date] ____, the Rule 706 Expert shall be available for
15 deposition in Seattle, Washington. Arrangements for the deposition shall be at a time and
16 place convenient to the Court's schedule.

17 7. By ____ [date] ____, the parties may submit written comments to the Court and
18 the Rule 706 Expert on the Rule 706 Expert's report.

19 8. The Rule 706 Expert shall attend the Markman hearing scheduled for ____
20 [date] ____, and shall testify at the Markman hearing after the presentations made by the
21 parties' counsel (and witnesses if appropriate) if the Court determines that such testimony
22 should be provided. The Rule 706 Expert also shall provide further assistance as the Court
23 may direct.

24 9. The Rule 706 Expert shall not report or testify at any jury trial in this case.

25 10. The Court has not yet determined whether the Rule 706 Expert shall participate
26 in any proceedings after the Markman hearing, including summary judgment.

ORDER

11. The Rule 706 Expert shall receive compensation for his/her services herein at the hourly rate of \$ [rate], together with reasonable expenses.

12. The fees and costs incurred by the Rule 706 Expert in connection with this appointment shall be borne equally by plaintiff (one-half) and defendants (one-half) and their respective shares thereof promptly paid as the Rule 706 Expert shall direct. All billings shall be submitted directly to the parties with a copy to the Court.

13. The Rule 706 Expert shall file a letter with the Court certifying that he/she has no current employment or personal relationship with any party in this case, or any known subsidiaries, that would constitute a conflict of interest, and that he/she has not previously worked for or with these parties, or any known subsidiaries, on matters material to this litigation.

14. The Clerk of the Court is directed to send a copy of this Order to all counsel of record and to [name of expert] at [address of expert].

IT IS SO ORDERED.

DATED this _____ day of _____, 2009.

THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

ORDER